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**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

15 | BOARD OF COMMISSIONERS OF  
16 | THE PORT OF NEW ORLEANS,

**Plaintiff,**

V.

18 | VIRGINIA HARBOR SERVICES,  
19 INC., ET AL.,

## Defendants.

No. SACV11-00437-GW(FFMx)

**RULE 54(b) FINAL JUDGMENT  
ORDER AS TO: (1) VIRGINIA  
HARBOR SERVICES, INC.,  
ROBERT B. TAYLOR AND  
WILLIAM ALAN POTTS; AND (2)  
GERALD THERMOS**

Date: January 19, 2012

Date: January 19  
Time: 8:30 A.M.

Judge: The Honorable George Wu  
Ctrm: 10

1       The Court has considered Plaintiff Board of Commissioners of the Port of  
2 New Orleans' ("Plaintiff") Motion for Final Approval of Class Action Settlements  
3 with Defendants: (1) Virginia Harbor Services, Inc. ("VHS"), Robert B. Taylor  
4 and William Alan Potts ("VHS Defendants"); and (2) Gerald Thermos  
5 (collectively, the "Settling Defendants") and has held a duly-noticed final approval  
6 hearing on January 19, 2012. The Court expressly finds, pursuant to Rule 54(b) of  
7 the Federal Rules of Civil Procedure, that there is no just reason for delay, and  
8 therefore expressly directs the entry of Final Judgment as to the Settling  
9 Defendants:

10      IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

11       1.     The Court has jurisdiction over the subject matter of this litigation.  
12       2.     Terms used in this Final Judgment Order which are defined in the  
13 Settlement Agreements between the Plaintiff and the Settlement Classes on the one  
14 hand and the Settling Defendants on the other hand are, unless otherwise defined  
15 herein, used in this Final Judgment Order as defined in the Settlement Agreements.

16       3.     The Court finds that the Marine Pilings Settlements were based on  
17 vigorous arm's-length negotiations, which were undertaken in good faith by  
18 counsel with significant experience litigating antitrust class actions.

19       4.     The Court finds that due and adequate notice was provided pursuant  
20 to Rule 23 of the Federal Rules of Civil Procedure to all members of the Settlement  
21 Classes certified herein, notifying the Settlement Classes of, *inter alia*, the  
22 pendency of the above-captioned action and the proposed Marine Pilings  
23 Settlements with the Settling Defendants. The notice provided was the best notice  
24 practicable under the circumstances and included individual notice by first-class  
25 mail to all members of the Settlement Classes who could be identified through  
26 reasonable effort as well as notice published in the *Investor's Business Daily* and in  
27 *Business Wire*. Notice fully complied in all respects with the requirements of Rule  
28

1 23 of the Federal Rules of Civil Procedure and the due process requirements of the  
2 Constitution of the United States.

3 5. With respect to the VHS Defendants Settlement Agreement, this  
4 Court certifies the following class for settlement purposes only:

5 All persons and entities (but excluding Defendants, their  
6 predecessors, parents, subsidiaries, affiliates, and co-  
7 conspirators, United States federal government entities  
8 and the State of Florida and all Florida state and local  
9 government entities) who purchased Marine Pilings in  
10 the United States directly from Settling Defendants,  
11 Named Co-Conspirators, any other Defendant or any of  
12 their predecessors, parents, subsidiaries, or affiliates at  
13 any time during the period from and including January 1,  
14 2000 to and including August 31, 2005.  
15

16 With respect to Thermos, the Court certifies the following class for settlement  
17 purposes only:

18 All persons and entities (but excluding Defendants, their  
19 predecessors, parents, subsidiaries, affiliates, and co-  
20 conspirators and United States federal government  
21 entities) who purchased Marine Pilings in the United  
22 States directly from Settling Defendants, Named Co-  
23 Conspirators, any other Defendant or any of their  
24 predecessors, parents, subsidiaries, or affiliates at any  
25 time during the period from and including January 1,  
26 2000 to and including August 31, 2005.  
27  
28

1       6. For the purposes of this Order, "Marine Pilings" means reinforced  
2 synthetic pilings and timbers, and related ancillary products, that are used in port  
3 and pier construction projects.

4       7. The Court finds that certification of the Settlement Classes is  
5 appropriate because:

- 6             (a) The Settlement Classes are so numerous that joinder of all  
7 members is impracticable, satisfying the requirement of Rule  
8 23(a)(1);
- 9             (b) There are questions of law or fact common to the Settlement  
10 Classes, satisfying the requirements of Rule 23(a)(2), including:  
11                 (1) did Defendants conspire to raise, fix, maintain or stabilize  
12 the prices, rig bids or allocate markets or customers of Marine  
13 Pilings purchased in the United States in violation of Section 1  
14 of the Sherman Act; (2) the period of time the conspiracy  
15 operated; and (3) whether the conspiracy raised, fixed,  
16 maintained or stabilized the prices of Marine Pilings;
- 17             (c) The claims of Representative Plaintiff Board of Commissioners  
18 of the Port of New Orleans are typical of the claims of the  
19 Settlement Classes, satisfying the requirement of Rule 23(a)(3);
- 20             (d) The Representative Plaintiff will fairly and adequately protect  
21 the interests of the Settlement Classes, satisfying the  
22 requirements of Rule 23(a)(4);
- 23             (e) Questions of law or fact common to the members of the  
24 Settlement Classes, as set forth above, predominate over  
25 questions affecting only individual members and a class action  
26 is superior to other methods available for the fair and efficient  
27 adjudication of the controversy, satisfying the requirements of  
28 Rule 23(b)(3); and

(f) The action is manageable as a class action for settlement purposes.

8. The Court's certification of the Settlement Classes as provided herein is without prejudice to, or waiver of, the rights of any Defendant other than the Settling Defendants to contest certification of any other proposed classes. The Court's findings in this Final Judgment Order shall have no effect on the Court's ruling on any motion to certify any litigation class and no party may cite or refer to the Court's approval of the Settlement Classes as persuasive or binding authority with respect to any motion to certify such a class.

9. The Court finds that no Settlement Class Members have timely requested to be excluded from the Settlement Class(es).

10. The Court finds that the Settlement Agreements with the Settling Defendants are fair, reasonable and adequate to the Settlement Classes within the meaning of Rule 23 of the Federal Rules of Civil Procedure. The Settlement Agreements are hereby approved pursuant to Rule 23(e) of the Federal Rules of Civil Procedure.

11. The Court finds that the escrow account described in the VHS Defendants Settlement Agreement is a qualified settlement fund (“QSF”) pursuant to Internal Revenue Code Section 468B and the Treasury Regulations promulgated thereunder.

12. All claims of Plaintiff and the Settlement Classes that were asserted against the Settling Defendants in the Complaint in the above-captioned Action are dismissed with prejudice, and, except as provided for in the Settlement Agreements, without costs.

13. Plaintiff, Settlement Class Members, their predecessors, successors, past and present parents, subsidiaries, affiliates, divisions, and departments, and each of their respective past and present officers, directors, employees, agents, attorneys, servants, and representatives, and the predecessors, successors, heirs,

1 executors, administrators, and assigns of each of the foregoing (“Releasing  
2 Parties”) are permanently barred and enjoined from prosecuting against the  
3 Released Parties, as defined in the respective Settlement Agreements, any and all  
4 claims, demands, actions, suits, and causes of action, damages, liabilities of any  
5 nature, including without limitation costs, expenses, penalties, and attorneys’ fees,  
6 whether class, individual, or otherwise in nature, that Releasing Parties ever had,  
7 now have, or hereafter can, shall, or may have directly, representatively,  
8 derivatively or in any other capacity against the Released Parties, whether known  
9 or unknown, suspected or unsuspected, in law or equity, concerning the pricing,  
10 selling, discounting, marketing, manufacturing, or distribution of Marine Pilings in  
11 the United States, which arise under and/or relate to any United States federal or  
12 state antitrust, unfair competition, unfair practices, price discrimination, unitary  
13 pricing, trade practice, or civil conspiracy law, including, without limitation, the  
14 Sherman Antitrust Act, 15 U.S.C. § 1 et seq., based in whole or in part on the facts,  
15 occurrences, transactions, or other matters alleged in, or that could have been  
16 alleged in the Class Action Complaint filed in *Board of Commissioners of the Port*  
17 *of New Orleans v. Virginia Harbor Services, Inc. et al.*, No. SACV11-00437 and  
18 the Consolidated Amended Class Action Complaint filed in *In re Marine Products*  
19 *Antitrust Litigation*, No. CV10-2319-GW (FFMx) (the “Released Claims”),  
20 provided, however, that nothing herein shall release: (1) any claims made by  
21 purchasers who are solely indirect purchasers of Marine Pilings as to such indirect  
22 purchases; (2) claims involving any negligence, breach of contract, bailment,  
23 failure to deliver lost goods, damaged or delayed goods or similar claim relating to  
24 Marine Pilings; and/or (3) claims under laws other than those of the United States.

25       14. Each member of the Settlement Classes has expressly agreed to waive  
26 and release, and shall be deemed to have waived and released, any and all  
27 provisions, rights and benefits conferred by section 1542 of the California Civil  
28 Code, which reads:

1                   Section 1542. Certain Claims Not Affected by General  
2                   Release.

3                   A general release does not extend to claims which the  
4                   creditor does not know or suspect to exist in his favor at  
5                   the time of executing the release, which if known by him  
6                   must have materially affected his settlement with the  
7                   debtor; and such release shall apply according to its  
8                   terms, regardless of the provisions of Section 1542 or any  
9                   equivalent, similar, or comparable present or future law  
10                  or principle of any jurisdiction.

11                 15. Each member of the Settlement Classes may hereafter discover facts  
12                 other than or different from those which he, she or it knows or believes to be true  
13                 with respect to the claims which are the subject matter of the provisions of this  
14                 paragraph, but each of those Settlement Class Members has expressly waived and  
15                 has fully, finally and forever settled and released all rights and benefits existing  
16                 under (i) Section 1542 or any equivalent, similar or comparable present or future  
17                 law or principle of law of any jurisdiction and (ii) any law or principle of law of  
18                 any jurisdiction that would limit or restrict the effect or scope of the provisions of  
19                 the release set forth above, without regard to the subsequent discovery or existence  
20                 of such other or different facts.

21                 16. The Settling Defendants shall have no obligation for attorneys' fees,  
22                 costs or expenses, except that VHS shall pay or cause to be paid reasonable costs  
23                 of disseminating notice of the settlement, including the cost of administration, in  
24                 an amount not to exceed \$25,000 as set forth in ¶ 30 of the VHS Defendants  
25                 Settlement Agreement.

26                 17. Nothing in this Final Judgment Order or the Settlement Agreements  
27                 and no aspect of the settlements or negotiations thereof are or shall be deemed or  
28

1 construed to be an admission or concession of any violation of any statute or law or  
2 of any liability or wrongdoing by the Settling Defendants or of the truth of any of  
3 the claims or allegations in any of the complaints in the Action or any other  
4 pleading, and evidence thereof shall not be discoverable or used, directly or  
5 indirectly, in any way, whether in the Action or in any other action or proceeding  
6 other than to enforce the terms of this Final Judgment Order or the Settlement  
7 Agreements.

8        18. Without affecting the finality of the Final Judgment in any way, this  
9 Court hereby retains continuing jurisdiction for the purposes of, *inter alia*,  
10 implementing and enforcing the Settlement Agreements (including any issue that  
11 may arise in connection with the formation and/or administration of the QSF),  
12 entering orders regarding the disbursement of the Settlement Amounts (as defined  
13 in the Settlement Agreements) to the Settlement Classes and to Settlement Class  
14 Counsel, and adjudicating the Action with respect to Plaintiff's claims asserted  
15 against the non-settling Defendants.

17           DONE AND ORDERED in Chambers in Los Angeles, California this 19th  
18 day of January, 2012.

George H. W.

**HONORABLE GEORGE H. WU  
UNITED STATES DISTRICT JUDGE**